FILED
99 NOV 16 AM 11:05
LANCE S. WILSON
CLERK
BY DEPUTY

GARY D. WOODBURY
Elko County District Attorney
KRISTIN A. MCQUEARY
Chief Civil Deputy District Attorney
575 Court Street
Elko, NV 89801
(775) 738-3101
(775) 738-0160 (fax)

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, v. John C. CARPENTER, individually and as Agent for Citizens United for the South Canyon Road; O.Q. JOHNSON, individually; Grant GERBER, individually; and ELKO COUNTY NEVADA, Defendants.	CV-N-99-00547-DWH (RAM)

DEFENDANT ELKO COUNTY'S ANSWER TO PLAINTIFF'S COMPLAINT AND COUNTERCLAIM

COMES NOW the Defendant County of Elko by and through the Elko County District Attorney's Office and in answer to Plaintiff's Complaint Admits, Denies and Alleges as follows:

1. In answer to paragraph 1 of Plaintiff's complaint, Defendant Elko County admits that the Complaint seeks declaratory and injunctive relief, but denies each and every other allegation of paragraph 1.

9

2. In answer to paragraph 2 of the complaint, Defendant Elko County admits that the issues in this lawsuit center upon the South Canyon Road, that the South Canyon Road is a dirt road that runs along the West Fork of the Jarbidge River and that the South Canyon Road is south of the town of Jarbidge, Nevada. The Defendant Elko County denies any inference in paragraph 2 that the United States Forest Service owns or controls the South Canyon Road.

3. The Defendant Elko County lacks sufficient knowledge or information so as to form a belief regarding the truth of the matters asserted and therefore denies the allegations of paragraph 3 of the complaint.

4. In answer to paragraph 4, Defendant Elko County admits that the Plaintiff is asserting a claim under common law trespass and the Endangered Species Act and that it is seeking an injunction, but denies that the Plaintiff is entitled to relief on its claims.

5. In answer to paragraph 5 of the complaint, Defendant Elko County admits that the Plaintiff is the United States of America, but denies every other allegation of paragraph 5.

6. In answer to paragraph 6, Defendant Elko County admits the allegations thereof.

7. In answer to paragraph 7, Defendant Elko County admits the allegations thereof.

8. In answer to paragraph 8, Defendant Elko County admits the allegations thereof.

9. Defendant Elko County denies the allegations of paragraph 9 in their entirety.

10. Defendant Elko County denies the allegations of paragraph 10 in their

entirety.

11. Defendant Elko County admits the allegations of paragraph 11 of the Complaint as it admitted the same allegation contained in paragraph 2 of the complaint.

12. Defendant Elko County admits the allegation of paragraph 12 of the Complaint as it admitted the same allegation in paragraph 2 of the complaint.

13. Defendant Elko County denies the allegations of paragraph 13.

14. Defendant Elko County admits the allegations of paragraph 14 of the Complaint.

15. In answer to paragraph 15 of the complaint, Defendant Elko County admits that the Bull Trout are listed as "threatened" under the Endangered Species Act, but denies that the listing is proper and in that regard alleges that the listing is scientifically unsupported and was undertaken solely to provide a supplemental means by which the South Canyon Road could be kept closed by Plaintiff.

16. In answer to paragraph 16, Defendant Elko County admits that Defendants Carpenter, Johnson and Gerber planned and stated they intended to do construction work on the South Canyon road on or about the date alleged.

17. Defendant Elko County lacks sufficient information or knowledge so as to form a belief regarding the truth of the allegations of paragraph 17, and therefore denies the allegations in paragraph 17 of the Complaint.

18. Defendant Elko County denies the allegations in paragraph 18 of the complaint.

19. Defendant Elko County denies the allegations in paragraph 19 of the Complaint.

20. Defendant Elko County is without knowledge or information so as to form a belief as to truth of the allegations of paragraph 20 of the Complaint and therefore

denies the same.

21. Defendant Elko County realleges its answers to paragraphs 1-20 and incorporates them by reference.

22. Defendant Elko County lacks sufficient knowledge and information so as to form a belief as to the truth of the allegations of paragraph 22 of the Complaint and therefore denies the same and in that regard asserts that to the extent this paragraph alleges that the bull trout has been properly listed as a threatened species or that a take within the meaning of the Endangered Species Act was contemplated or would have resulted from the actions of Defendants Carpenter, Gerber or Johnson, those allegations are specifically denied.

23. In answer to paragraph 23 of the complaint, Defendant Elko County admits that plaintiffs agents have listed the bull trout as a threatened species, but denies that the listing was proper.

24. The Defendant Elko County denies the allegations of paragraph 24 of the Complaint.

25. Defendant Elko County denies the allegations of paragraph 25 of the Complaint.

26. In answer to paragraph 26 of the Complaint, Defendant Elko County admits that the Plaintiff is seeking declaratory relief and a preliminary and permanent injunction, but denies that the Plaintiff is entitled to relief on its claims.

27. In answer to paragraph 27 of the Complaint, Defendant Elko County realleges its answers to paragraphs 1-26 and hereby incorporates them by reference.

28. Defendant Elko County denies the allegations of paragraph 28 of the Complaint.

29. Defendant Elko County denies the allegations of paragraph 29 of the

Complaint.

30. Defendant Elko County denies the allegations of paragraph 30 of the Complaint.

31. In answer to paragraph 31 of the complaint, Defendant Elko County admits that the Plaintiff is seeking declaratory and injunctive relief, but denies that the Plaintiff is entitled to such relief.

I. AFFIRMATIVE DEFENSES

First Defense

The Complaint fails to state a claim against Defendant Elko County upon which relief can be granted.

Second Defense

The Plaintiff has improperly listed the bull trout as threatened under the Endangered Species Act.

Third Defense

Any damages that potentially would have been sustained by Plaintiff would be caused by the acts of persons other than Defendant Elko County, who were not the agents, servants, employees, joint venturers or acting on behalf of Defendant Elko County and therefore Defendant Elko County is not liable to Plaintiff, nor should it be restrained.

Fourth Defense

As the focus of the Complaint appears to be on the proposed actions of Defendants Carpenter, Johnson and Gerber, Defendant Elko County lacks sufficient knowledge and information to plead other affirmative defenses and therefore reserves its right to supplement its answer in the future when it has sufficient information to assert such defenses.

II. COUNTERCLAIM

For its counterclaim against the United States, the Counter claimant Elko County alleges as follows:

I. Jurisdiction and Venue

1. This Court has jurisdiction pursuant to its Order filed October 21, 1999, and 28 U.S.C. 1346 (f), Quiet Title. Venue is proper in this Court as the Jarbidge South Canyon Road is located in Elko County, State of Nevada, 28 U.S.C. 1391.

2. This counterclaim seeks a declaration, quieting title in the Counter claimant Elko County to an easement on the Jarbidge South Canyon Road to Elko County, pursuant to Section 8 of the act of July 26, 1866, 14 Stat 253, formerly section 2477 of the Revised Statutes of the United States.

3. Elko County is a political subdivision of the State of Nevada and is charged by State statute to manage a public road system within the boundaries of Elko County.

4. Elko County has accepted the Jarbidge South Canyon road as a public highway.

5. The Jarbidge South Canyon Road evolved from a primitive trail in 1896 to a route improved by construction sufficient to accommodate wheeled traffic prior to any reservation of the underlying lands for public purposes and provided, throughout its existence until 1995 when it was damaged by flood, public and systematic access for commercial, recreational and religious purposes from at least the intersection of what is known as Pavlak Grade to what is known as Perkins Cabin, for Native Americans, trappers, miners, livestock owners, homesteaders, and visitors. Counter claimant does not yet possess a specific legal description of the South Canyon road and prays leave of this Court to amend this Counterclaim to include that legal description when it is obtained.

PRAYER FOR RELIEF

WHEREFORE, Elko County prays as follows:

1. That Plaintiff take nothing by its Complaint.

2. That judgment be entered against Plaintiff and in favor of Elko County: quieting title on the South Canyon Road to Elko County

3. For such other and further relief as seems just to the Court.

DATED this 13th day of November, 1999.

GARY D. WOODBURY
Elko County District Attorney
575 Court Street
Elko, NV 89801

By: Kristin A. McQueary
KRISTIN A. McQUEARY
Deputy District Attorney

CERTIFICATE OF SERVICE BY MAIL

I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the Elko County District Attorney's Office, and that on the 16TH day of, November, 1999, I served the foregoing by mailing or causing to be mailed, a copy of said document, upon which first class postage was prepaid, to the following addressee(s):

STEVEN W. MYHRE
BLAINE T. WELSH
Assistant United States Attorney
701 E. Bridger, Suite 600
Las Vegas, NV 89101

JOHN C. CARPENTER
1091 Dotta Drive
Elko, NV 89801

GRANT GERBER
491 4th Street
Elko, NV 89801

O.Q. JOHNSON
859 Northside Drive
Elko, NV 89801

Loretta Morton
Loretta Morton
Caseworker

f:\cv\answer.car